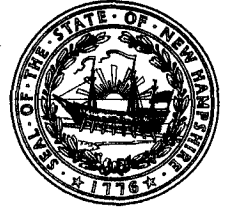




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Timothy Castine
Joni Castine
Post Office Box 262
Raymond, NH 03077-0262

Re: 97 Jenness Road, Epping, NH
Epping Tax Map #28, Lot #13

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE**

No. AF 06-017

May 5, 2006

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Waste Management Division to Timothy & Joni Castine, pursuant to RSA 146-A and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling **\$9,500** be imposed against Timothy & Joni Castine for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Timothy & Joni Castine are individuals doing business as Tim & Joni's Towing & Recycling (also known as Tim & Joni's Towing/Recycling) having a mailing address of PO Box 262, Raymond, NH 03077-0262.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 146-A authorizes Department of Environmental Services ("DES") to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks.
3. RSA 146-A authorizes DES to regulate investigation, management, and remediation of petroleum discharges. Pursuant to RSA- 146-A:11-c, the Commissioner of DES has adopted Env-Wm 1600 to "establish procedures and requirements for notification, reporting, response

actions, investigation, remediation, and management of site where discharges of oil have occurred.”

4. RSA 146-A:15 authorizes the Commissioner of DES to impose fines of up to \$2000 per offense for violations of RSA 146-A. Pursuant to RSA 146-A:15, the Commissioner has adopted Env-C 606 to establish a schedule of fines for such violations.

5. Timothy and Joni Castine are the owners of land at 97 Jenness Road in Epping, New Hampshire, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3328, Page 2485, and identified on Epping Tax Map 028 as Lot 013 (“the Property”).

6. “Tim & Joni’s Towing & Recycling” and “Tim & Joni’s Towing/Recycling” are trade names registered with the New Hampshire Department of State.

7. Mr. and Mrs. Castine operate a motor vehicle salvage yard and motor vehicle towing facility at the Property.

8. On December 7, 2004, DES received a complaint alleging improper automobile crushing operations and improper management of vehicle fluids at the Property.

9. On December 29, 2004, DES personnel conducted an inspection of the Property to determine whether Mr. and Mrs. Castine’s operation was in compliance with RSA 147-A, RSA 149-M, RSA 146-A, RSA 485-C and state administrative rules adopted pursuant thereto.

10. During the inspection, DES personnel learned that Mr. and Mrs. Castine remove used oil, gasoline and antifreeze from end-of-life vehicles (“ELV”s) at the Property.

11. During the inspection, DES personnel learned Mr. and Mrs. Castine operate a stationary ELV crusher. At the time of the inspection the crusher was staged over bare ground.

12. During the inspection, Mr. Castine informed DES personnel that their business collects a mixture of fluids; specifically used oil, antifreeze, transmission fluid, and gasoline, from the ELV crusher, which is then phase-separated in a 5-gallon container.

13. During the inspection, Mr. Castine informed DES personnel that ELV gas tanks are drained into containers on a small concrete pad, after which the contents of the containers are poured into 55-gallon drums which are stored on the bare ground.

14. During the inspection, DES personnel learned that the business dismantles ELVs, drains fluids from ELVs and transfers the fluids over bare ground and not over an impervious surface at the Property.

15. During the inspection, DES personnel observed several areas of oil stained soil near the entrance to the garage and in the area of the ELV vehicle crusher.

16. RSA 146-A:5, II, states that “any person who becomes aware of an oil discharge in violation of this chapter shall immediately notify the department of environmental services.”

17. Env-Wm 1603.02 specifies that "a responsible party or other person required to notify under Env-Wm 1603.06 shall notify the department after obtaining knowledge that a discharge had occurred."

18. Env-Wm 1403.05 sets the ambient groundwater quality standard (AGQS) for methyl tertiary-butyl ether (MtBE) at 13 ppb.

19. As a result of the inspection on December 29, 2004, DES personnel learned that laboratory test results of a sample taken from the drinking water supply well on the Property, tested on October 14, 2003, showed the sample contained 11,000 ppb MtBE.

20. The MtBE level referred to in the preceding paragraph exceeds the ambient groundwater quality standards of Env-Wm 1403.05.

21. A review of DES files reveals that DES has no record showing that Mr. and Mrs. Castine notified DES that the well was contaminated or that there had been a petroleum discharge at the Property.

22. RSA 146-A:3 states in part that "any person who, without regard to fault, directly or indirectly causes or suffers the discharge of oil into or onto any surface water or groundwater of this state, or in a land area where oil will ultimately seep into any surface water or groundwater of the state in violation of RSA 146-A, or rules adopted under RSA 146-A, shall be strictly liable for costs directly or indirectly resulting from the violation."

23. RSA 146-A:4, II, states that "any person strictly liable for an oil discharge shall immediately undertake to contain or remove such discharge to the satisfaction of DES."

24. Test results as noted above indicate that one or more discharges of petroleum occurred at the Property and that the discharges were not immediately cleaned up.

25. Env-Wm 1604.03(a)(2) specifies that "a responsible party shall conduct an initial response action to reduce potential future costs of response actions by remediating or containing discharges until such time as a more comprehensive response action can be implemented."

26. A review of DES records reveals no record showing that Mr. and Mrs. Castine conducted an initial response action as required.

27. Env-Wm 1602.02 specifies clean up standards for all contaminated soil resulting from a discharge of oil.

28. DES hired Weston Solutions, Inc. ("Weston"), to conduct a Site Investigation at the Property and prepare a Site Investigation Report ("Report"). The Weston Report dated August 19, 2005, documented the existence of 2,750 tons of gasoline contaminated soil in the vehicle dismantling/fluid transfer area immediately down gradient of the gasoline above-ground storage tank ("AST") on the Property.

29. The contaminated soil on the Property referenced in the Report exceeds the soil clean up

standards of Env-Wm 1602.02.

30. Env-Wm 1602.01 specifies all groundwater of the state shall meet the groundwater quality criteria and ambient groundwater quality standards of Env-Wm 1403.

31. During Weston's Site Inspection, a monitoring well was installed within the dismantling/fluid transfer area. MtBEs were detected at 21,000 ug/L in a sample collected from this monitoring well on May 27, 2005.

32. The MtBE level noted above exceeds the ambient groundwater quality standards ("AGQS").

33. MtBEs have been detected, above the AGQS of 13 ug/L, in the two water supply wells on the Property and in seven of the nearby water supply wells on surrounding properties. The Weston Report states that "Although other potential sources of VOC contamination may exist at individual properties in the area, none are considered to be of sufficient magnitude to have caused the levels of contamination reported in the local bedrock water supply. Therefore, the presence of MtBE and other fuel-related substances detected in the Jenness Road [area] are the result of past auto recycling activities conducted at the Property."

34. Env-Wm 1402.02(a)(1) specifies that the AST Rules shall apply to those facilities having a single tank system with an oil storage capacity of more than 660-gallons, intended for storage, transfer, or distribution of oil.

35. Env-Wm 1402.02(a)(2) specifies that the AST Rules shall apply to those facilities having two or more tank systems with a combined oil storage capacity of more than 1,320 gallons, intended for storage, transfer, or distribution of oil. The combined oil storage capacity shall be determined using only tank systems on a facility with an oil storage capacity of 86 gallons or more and five or more standard storage drums containing the same product at the same location on the facility.

36. RSA 146-A:2, IX defines "[AST] Facility" as "a location, including structures or land, at which oil is subjected to treatment, storage, processing, refining, pumping, transfer, or collection."

37. Env-Wm 1402.03(c) defines "AST system" as one or more aboveground storage tanks in combination with piping, pumps, containment structures, monitors, or other appurtenances, used to contain, receive, or dispense oil.

38. During the DES inspection on December 29, 2004, DES personnel observed twenty 55-gallon drums labeled "gas." Not all the drums were stored on an impervious surface or under cover. One drum was open. No drums were stored inside secondary containment. A 700-gallon tank used in storage of gasoline was also observed by DES personnel during the inspection. This tank was not labeled.

39. The drums and tank set out above are considered AST systems under RSA 146-A, and the AST Rules.

40. The AST systems at the Property are subject to the requirements of RSA 146-A, and the

AST Rules.

41. The Property is an AST Facility as defined by RSA 146-A:2, IX.
42. On January 4, 2005, DES personnel conducted an inspection of the AST systems at the Property.
43. Env-Wm 1402.03(aa) defines "Owner" as "the person in possession of or having legal ownership of a facility."
44. Mr. and Mrs. Castine are the owners of an AST facility pursuant to RSA 146-A, and the AST Rules.
45. Env-Wm 1402.05(a) requires owners of any AST facility to register the AST systems at the facility with DES.
46. A review of DES records on January 4, 2005 revealed that DES had no record showing that Mr. and Mrs. Castine had registered the AST systems located at the Property with DES.
47. Env-Wm 1402.30 requires the owner of an AST facility to prepare and implement a Spill Prevention Control and Countermeasure ("SPCC") Plan, which is a written document establishing release prevention and response procedures for releases from the tank or tank systems.
48. During the inspection on January 4, 2005, DES personnel determined that Mr. and Mrs. Castine did not have an SPCC plan for their AST facility.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. Timothy & Joni Castine have violated Env-Wm 1402.05(a) by failing to register with DES all aboveground storage systems at the Property. For this violation, Env-C 615.02(a) specifies a fine of \$1,500 for failure to register above ground storage systems with DES.
2. Timothy & Joni Castine have violated Env-Wm 1402.30 by failing to maintain a written SPCC Plan prepared in accordance with Title 40 of the Code of Federal Regulations, Part 112. For this violation, Env-C 615.05(b) specifies a fine of \$2,000 for failure to maintain a written SPCC Plan.
3. Timothy & Joni Castine have violated RSA 146-A:5, II, and Env-Wm 1603.02 by failing to notify DES of a petroleum spill(s) at the Property. For this violation, Env-C 606.02(a) specifies a fine of \$2,000 per discharge for failure to report the discharge or spillage of any oil as required by RSA 146-A:4, RSA 146-A:5 and Env-Ws 412.02 (now codified as Env-Wm 1603.02).
4. Timothy & Joni Castine have violated RSA 146-A:4, II, and Env-Wm 1604.03(a)(2) by failing to conduct an initial response action to reduce potential future costs of response actions by remediating or containing discharges until such time as a more comprehensive response action could be implemented. For this violation, Env-C 606.03(b) specifies a fine of \$2,000.

5. Timothy & Joni Castine have violated RSA 146-A:3, by directly or indirectly causing or suffering the discharge of oil into or onto any surface water or groundwater of this state, or in a land area where the oil will ultimately seep into surface water or groundwater. For this violation, Env-C 606.05(a) specifies a fine of \$2,000.

The total fine being sought is \$9,500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, Timothy & Joni Castine are required to respond to this notice. Please respond no later than June 2, 2006 using the enclosed colored form.

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply


with the requirement that was violated.

3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509..


Anthony P. Giunta, P.G., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Lynn A. Woodard, P.E., WMD AST Supervisor
Michael W. Juranty, P.E., WMD AST Chief
Cheryl Fortier McGary, WMD Special Investigator
cc: Gretchen Hamel, DES Legal Unit Administrator
Town of Epping Selectmen
Town of Epping Conservation Commission

***** RETURN THIS PAGE ONLY *****

**TIMOTHY & JONI CASTINE ARE REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN June 2, 2006

Please check the appropriate line and fill in the requested information below:

APPEARANCE On behalf of Timothy & Joni Castine:

_____ I/We request to have a **formal hearing** scheduled in this matter.

_____ I/We would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of Timothy & Joni Castine:

_____ I/We certify that I/we understand the right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$9,500 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Signature

Date

Name(s)/(please print or type): _____

Title(s): _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95, Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.